

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES H. LESAR,

Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY,

Defendant

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Civil Action No. _____

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER

STATEMENT OF THE CASE

This case arises under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the First Amendment to the United States Constitution. Plaintiff is a lawyer with extensive experience litigating FOIA cases. In this action he seeks to obtain records which will enable him to communicate information and arguments to the public and to Congress concerning the merits of legislation to exempt the "operational" files of the Central Intelligence Agency (CIA) from the search and review requirements of the FOIA.

On June 28, 1983, plaintiff submitted a request to the CIA for records reflecting the impact which a Senate bill, S. 1324, would have on pending FOIA litigation against the CIA. He asked that his request be expedited so that the information could be used by those who wished to have an input into congressional consideration of S. 1324. Complaint, Exhibit 1. In responding to his request,

the CIA acknowledged its urgency and stated that in the near future it would be in touch with him about it. Complaint, Exhibit 3. Notwithstanding the passage of more than 14 months since the CIA acknowledged the urgency of his request and promised to be in touch with him about it "in the near future," plaintiff has received no further communication from the CIA regarding it.

On August 24, 1984, plaintiff submitted a second request for materials pertinent to FOIA legislation pending before Congress. Plaintiff also requested expedited handling of this request, noting that the information he sought was needed in connection with congressional consideration of S. 1324 and H.R. 5164, and that H.R. 5164 would be voted on by the House of Representatives when it returned from its August recess. Complaint, Exhibit 4. Plaintiff has received no response to this request.

The House of Representatives is presently scheduled to vote on H.R. 5164 in the late afternoon of Tuesday, September 18, 1984. Plaintiff is an active participant in efforts to persuade members of Congress to vote against H.R. 5164. He seeks to have this Court enjoin defendant from withholding the requested records so that he will be able to further inform Congress and the public regarding the merits of the bill.

ARGUMENT

It is obvious from the recital of facts that plaintiff will suffer irreparable harm if defendant is permitted to continue withholding the requested materials. Unless plaintiff receives almost immediate access to these records, he will be unable to disseminate

the information they contain to members of Congress or the public in time to influence the debate and vote on H.R. 5164. This will deny plaintiff the effective exercise of his First Amendment rights and thwart the very purpose for which the Freedom of Information Act was enacted.

Defendant has failed to cite any basis for withholding the requested materials from plaintiff. The exemptions which the CIA usually invokes, 5 U.S.C. § 552(b)(1) and (b)(3), involve national security considerations which are not likely to apply to any of the records sought in this action, nor are there any other exemptions which are likely to apply. Even if some materials are subject to valid exemption claims under FOIA, the remainder would have to be released. Thus, it is evident that there is a substantial likelihood that plaintiff will prevail on the merits at a trial of this action.

Defendant will suffer no harm if this Court restrains it from further withholding the requested materials. Rather, it will simply be required to fulfill the obligations mandated by the Freedom of Information Act.

Issuance of a restraining order will benefit the public interest. The Freedom of Information Act is a legislative implementation of the profound values of the First Amendment, and the First Amendment embodies "a profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide open." The New York Times v. Sullivan, 376 U.S. 254, 270 (1974). In order to foster the purposes of the FOIA and

to protect plaintiff's First Amendment rights, this Court should issue the restraining order requested by plaintiff.

Respectfully submitted,


JAMES H. LESAR

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Attorney pro se

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TEMPORARY RESTRAINING ORDER

This cause having come on to be heard upon the plaintiff's application for a temporary restraining order with notice to the defendant or its attorney, and the Court having considered the complaint, the sworn declaration submitted by plaintiff James H. Lesar in support of the application, and the Court being of the opinion that immediate and irreparable harm will be sustained by plaintiff unless this order is entered, and that plaintiff is likely to succeed on the merits of his claim, it is by the Court this ____ day of September, 1984, at ____ .m.,

ORDERED, that defendant is hereby restrained from withholding from plaintiff the records which he requested in his letters to the defendant dated June 28, 1983, and August 24, 1984 (Exhibits 1 and 4 to the Complaint), and shall release said records to plaintiff forthwith.

UNITED STATES DISTRICT JUDGE